

## **REMARKS**

### **Overview of the Office Action**

Claims 1-4 have been rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 6,819,247 to Birnbach et al. (“Birnbach”) in view of U.S. Patent No. 6,842,433 West et al. (“West”).

### **Claim Status**

Claims 1-4 have been amended.

Claims 1-4 remain pending.

### **Summary of subject matter disclosed in the specification**

The following descriptive details are based on the specification. They are provided only for the convenience of the Examiner as part of the discussion presented herein, and are not intended to argue limitations, which are unclaimed.

Disclosed is an apparatus for monitoring an audience member tuned to a broadcast program. The apparatus includes a portable audience monitoring unit adapted to be worn by the audience member. The monitoring unit includes means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program. The code signal corresponds to the broadcast program to which the audience member is tuned. The monitoring unit further includes means for storing the detected code signal. The apparatus further includes means for outputting the detected code signal stored in the audience monitoring unit, and communication means for transmitting the outputted detected code signal to a central

processing station, wherein the communication means communicates with Cellular Digital Packet Data (CDPD).

### **Descriptive summary of Birnbach**

Birnbach discloses an apparatus, method, and system for remote monitoring of need for assistance based on change in velocity. The apparatus includes a portable unit that may be wearable, has an intelligent control, a detector capable of detecting a physical parameter related to acceleration, and a transmitter. When an acceleration of the wearer is determined to exceed a particular threshold, the intelligent control device instructs a transmitter to send an alert signal. The method involves monitoring for need of assistance by monitoring a physical parameter of the person related to acceleration and transmitting a need of assistance alert. The system includes one or more monitor units for determining the need for assistance based on a physical parameter related to acceleration, and a communications network for receiving information from the monitored unit and notifying a third party.

### **Descriptive summary of West**

West discloses a method of transmitting information to a portable computing device. The method includes using a first communication protocol to transmit a client application to the portable computing device. The client application configures the portable computing device to communicate with a distributor using a data transfer communication protocol. Using the data transfer communication protocol, the information is transmitted from the distributor to the portable computing device. Transmitting the information includes generating, at the distributor, a polling signal; detecting, at the distributor, an acknowledgement signal generated, in response

to the polling signal, by the portable computing device; and generating, in response to the acknowledgement signal, a broadcast signal incorporating the information.

**Claim 1 is allowable over Birnbach in view of West under 35 U.S.C. §103(a)**

The Office Action states that the combination of Birnbach and West teaches all of Applicants' recited elements.

Independent claim 1 has been amended to point out more clearly the subject matter that Applicants regard as the invention. Specifically, independent claim 1 has been amended to recite an apparatus for monitoring an audience member tuned to a program within a broadcast signal. The apparatus includes a portable audience monitoring unit adapted to be worn by the audience member. The monitoring unit includes means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program. The code signal corresponds to the broadcast program to which the audience member is tuned. The monitoring unit further includes means for storing the detected code signal. The apparatus further includes means for outputting the detected code signal stored in the audience monitoring unit, and communication means for transmitting the outputted detected code signal to a central processing station, wherein the communication means communicates with Cellular Digital Packet Data (CDPD). Support for the claim amendment can be found, for example, on page 11, lines 7-24 of the originally filed specification.

Birnbach and West, whether taken alone or in combination, fail to teach or suggest an apparatus for monitoring an audience member tuned to a broadcast program. Birnbach and West also fail to teach or suggest means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, the code signal

corresponding to the broadcast program to which the audience member is tuned, as recited in Applicant's amended independent claim 1.

The Examiner has cited col. 2, lines 47-49; col. 3, lines 35-43; col. 6, lines 32-44; and the abstract, lines 1-17 of Birnbach as teaching an apparatus for monitoring an audience member. Applicants submit that the cited passages of Birnbach have been misinterpreted.

The cited passages of Birnbach teach remote monitoring of a person for their need for assistance. People in this category include anyone that engages in an independent and/or active lifestyle but still may be susceptible to injury (see col. 1, lines 26-28 of Birnbach). In contrast, Applicants' invention is directed to an apparatus for monitoring an audience member. According to Applicants' specification, an audience member is specifically defined as a person or persons who perceive a broadcast program (see page 11, lines 18-19 of Applicants' specification). Birnbach monitors anyone who exceeds a predefined physical parameter, while Applicants' claim 1 is directed to people performing a specific activity (i.e., watching or listening to a specific broadcast program). The group of people being monitored in Birnbach are monitored continuously, while the group of people monitored by Applicants' claimed apparatus are monitored only when they are part of an "audience" (i.e. perceiving a specific broadcast program). Clearly, the group of people monitored in Birnbach is different from the group of people monitored by the apparatus recited in Applicants' amended claim 1. Therefore, Birnbach does not teach or suggest an apparatus for monitoring an audience member, as recited in applicant's amended independent claim 1.

The Examiner has cited col. 8, lines 34-54; col. 10, lines 29-38 and lines 46-64; and the abstract, lines 1-17 of Birnbach as teaching means for detecting a signal corresponding to the broadcast program to which the audience member is tuned. Applicants submit that the cited passages of Birnbach have been misinterpreted.

The cited passages of Birnbach teach detecting a signal that is generated in response to a physical parameter, such as acceleration, exceeding a preset threshold. The detected signal taught by Birnbach is derived from an accelerometer, which is part of the device worn by the person being monitored (see col. 8, lines 37-39 and col. 10, lines 29-38 of Birnbach). In other words, the detected signal is generated by the device worn by the person being monitored, and corresponds to the physical actions of the wearer (e.g. a fall, sudden stop, or dropping the device). The detected signal in Birnbach is stored by the device, and the person wearing the device is alerted via a warning signal. The person wearing the device of Birnbach has the opportunity to deactivate the device, thus preventing the warning signal from being transmitted to a third party. If the person wearing the device of Birnbach does not deactivate the device, the warning signal is then transmitted to a third party (see col. 10, lines 29-64 of Birnbach).

Further, the detected signal of Birnbach is not a signal embedded in another remotely transmitted programming signal, as is Applicants' recited code signal. Moreover, the detected signal of Birnbach corresponds to the actions of the wearer of the Birnbach device. The detected signal of Birnbach does not correspond to a broadcast program that an audience member is tuned to, as does Applicants' recited code signal. Therefore, Birnbach does not teach or suggest means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to transmit the broadcast program, the code signal corresponding to the broadcast program to which the audience member is tuned, as recited in Applicants' amended independent claim 1.

In contrast, Applicants' claimed apparatus detects such a code signal. The broadcast signal is used to transmit a program, and the code signal corresponds to the broadcast program to which the audience member is tuned. In other words, the detected code signal recited in Applicants' claim 1 is remotely generated by a device separate from the device worn by the person being

monitored, and is embedded in another remotely generated broadcast signal. The broadcast signal is transmitted, and the code signal is detected by Applicants' recited apparatus.

West teaches a wireless information distributor and a protocol for broadcasting information to portable computing devices. The system taught by West involves having the distributor generate a polling signal to alert the portable computing device that information is available. When the portable computing device of West detects the beacon, the portable computing device responds to the beacon with an acknowledgement signal. In response to the acknowledgement signal, the distributor of West generates and transmits to the portable computing unit a broadcast signal that includes the information. Nothing whatsoever is taught or suggested by West regarding an apparatus for monitoring an audience member, and means for detecting a code signal embedded within a broadcast signal used to transmit the program, where the code signal corresponds to the broadcast program to which the audience member is tuned, as recited in Applicants' amended independent claim 1.

In view of the foregoing, it is respectfully submitted that Birnbach and West, whether taken alone or in combination, do not teach or suggest the subject matter recited in Applicants' amended independent claim 1. Accordingly, claim 1 is patentable thereover under 35 U.S.C. §103(a).

Independent claims 2-4 have been amended to recite limitations analogous to those in amended independent claim 1 and are, therefore, deemed to be patentably distinct over Birnbach and West for reasons discussed above with respect to independent claim 1.

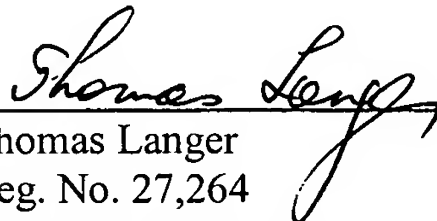
## **Conclusion**

In view of the foregoing, reconsideration and withdrawal of all rejections, and allowance of all pending claims is respectfully solicited.

Should the Examiner have any comments, questions, suggestions, or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

Respectfully submitted,

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Dated: March 26, 2007